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MONTANA LEGISLATIVE HISTORY

Chapter 365 1993

Bill H _____ S 153 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3/12	✓ C	Hearing Date(s)	1/19	✓ C
		C		1/25	✓ C
		C		2/4	✓ C
		C			C
Date Out	3/25	C		2/6	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 153

INTRODUCED BY DOHERTY, J. RICE
BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

JANUARY 14, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 6, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 8, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 9, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 40; NOES, 10.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 25, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 85; NOES, 14.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 5, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 0752/01

Senate BILL NO. 153

INTRODUCED BY DeHerty

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MANDATORY MOTOR VEHICLE REGISTRATION AND LIABILITY PROTECTION LAWS; PROVIDING THAT THE SENTENCE FOR DRIVING WITHOUT INSURANCE MAY NOT BE DEFERRED; ABOLISHING THE REQUIREMENT THAT A MOTOR VEHICLE REGISTRATION RECEIPT AND PROOF OF INSURANCE CERTIFICATE BE SIGNED BY THE OWNER; REVISING THE PROOF OF INSURANCE REQUIREMENTS; INCREASING THE PENALTY FOR DRIVING WITHOUT INSURANCE; ADDING ADDITIONAL PENALTIES; AND AMENDING SECTIONS 46-18-201, 61-3-322, 61-3-535, 61-6-302, 61-6-304, 61-11-203, AND 61-13-104, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. **Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence up to the maximum

SB 153

INTRODUCED BILL

sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or

part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the

imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or a women's correctional facility, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 2. Section 61-3-322, MCA, is amended to read:

"**61-3-322. Certificates of registration -- issuance.** (1) Upon completion of the application for registration on forms furnished by the department, the county treasurer shall file one copy in ~~his~~ the treasurer's office and issue to the applicant two copies of the application marked

"Owner's Certificate of Registration and Payment Receipt", one of which ~~shall~~ must be marked "file copy".

(2) The certificate of registration ~~shall~~ must contain upon the face ~~thereof~~ of the certificate the information described in 61-3-202(2).

(3) ~~Every owner, upon receiving a registration receipt, shall write his signature on the receipt with pen and ink in the space provided.~~ The registration receipt, a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer, a notarized photostatic copy, or a duplicate furnished by the department ~~shall~~ must at all times be carried in the vehicle to which it refers or ~~shall~~ must be carried by the person driving or in control of the vehicle, who shall display it upon demand of a police officer or any officer or employee of the department or the transportation department.

(4) The county treasurer shall daily forward to the department one copy of all applications for registration received that day.

(5) It is not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt."

Section 3. Section 61-3-535, MCA, is amended to read:

"**61-3-535. Vehicle reregistration by mail -- renewal cards and reregistration notice by mail.** (1) Except as

provided in subsection (2), an owner of the following types of motor vehicles may reregister by mail:

(a) light vehicles, motorcycles, quadricycles, and other vehicles subject to tax under 61-3-504(2); and

(b) travel trailers, campers, and motor homes subject to a fee in lieu of tax under 61-3-521.

(2) The option to reregister by mail need only be made available for vehicles, motor homes, and travel trailers registered at the close of the expiring registration period in the name of the applicant for reregistration and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department.

(3) The department shall develop a procedure to facilitate the reregistration by mail of the vehicles listed in subsection (1). The mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification.

~~(4) In the case of light vehicles, the form to be returned to the county treasurer by the applicant, with the appropriate tax and fees, is to contain a statement that the applicant is in compliance with the financial liability requirements of 61-6-301.~~

~~(5)~~(4) The procedure implemented by the department to permit reregistration or camper decal application by mail

~~shall~~ must provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister ~~his~~ the owner's vehicle with the county treasurer or to apply for the annual camper decal.

~~(6)~~(5) The department shall adopt rules to implement the mail reregistration and decal application procedure."

Section 4. Section 61-6-302, MCA, is amended to read:

"61-6-302. ~~Proof of compliance. (1) Except as provided in subsection (2), before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond or that he is eligible for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the department. The department may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities, punishable as provided in 45-7-203.~~ The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303 it is unlawful to operate the vehicle without a valid motor vehicle liability

insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required in 61-6-301.

~~(2)--An-applicant-for-registration-of--a--motor--vehicle who--wishes--to--register--the--vehicle--by-mail-must-sign-a statement-on-the-application-stating-that-the--applicant--is in--compliance--with-the-financial-liability-requirements-of 61-6-301.~~

~~(3)~~(2) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the department and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

~~(4)~~(3) Every person shall carry in a motor vehicle being operated by ~~him~~ the person an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, ~~no~~ a person charged with violating this subsection may not be convicted if ~~he~~ the person produces in court or the office of the arresting officer proof of insurance valid at the time of ~~his~~ arrest."

Section 5. Section 61-6-304, MCA, is amended to read:

"**61-6-304. Penalties.** (1) It is unlawful for any person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless ~~such~~ the person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the department as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303.

(2) ~~A-violation-of~~ Conviction of a first offense under 61-6-301 through 61-6-304 is ~~a-misdemeanor~~ punishable by a fine of ~~not-less-than~~ $250 ~~and-not--to--exceed--$500~~ or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than 10 days, or both.

(3) Upon a second or subsequent conviction, the sentencing court shall order the surrender of the vehicle registration certificate, registration receipt, and license plates for the vehicle operated at the time of the offense unless the vehicle was not registered to the offender and

the offender was using it without permission of the person to whom it was registered. The court shall send the certificate, receipt, and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the certificate, receipt, and plates for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction. The certificate, receipt, and plates may not be reinstated until the expiration of that period, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle.

(4) Upon a second or subsequent conviction, the offender is ineligible to register and obtain license plates for any motor vehicle during the period of suspension under subsection (3).

(5) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(6) A court may not defer imposition of penalties provided by this section."

Section 6. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a

forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to

stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) a mandatory motor vehicle liability protection offense under 61-6-304, 5 points;

~~(j)~~(k) operating a motor vehicle without a license to do so, 2 points (this subsection ~~(j)~~(k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

~~(k)~~(l) speeding, 3 points;

~~(l)~~(m) all other moving violations, 2 points.

(3) There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Section 7. Section 61-13-104, MCA, is amended to read:

"**61-13-104. Penalty -- no record permitted.** (1) A driver who violates 61-13-103 must be fined $20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203~~(2)~~~~(l)~~(2)(m). Bond for this offense is $20, and no jail sentence may be imposed.

(2) No violation of 61-13-103 may be recorded or charged against the driver's record of a person violating 61-13-103, and no insurance company shall hold a violation of 61-13-103 against the insured, and there may be no increase in premiums due to a violation of 61-13-103."

-End-

identified, but the offenders be prosecuted. There will not be any burden of proof shifting in SB 129. All defenses available to the accused individual will still be available.

Proponents' Testimony:
Donna Hall, Hall Transit and President of Montana School Bus Contractors Association, stands in support of SB 129 because school bus regulations are being violated often. Ms. Hall said that it is easy to identify a car, but not the identity of the driver, so SB 129 will help in prosecuting the violators.

Cheryl Thares, Great Falls Public Transportation Office, read from (Exhibit #1).

Don Waldron, Montana Rural Education Association, would like to go on record supporting SB 129. Mr. Waldron stated the problem with the law now is that a driver cannot be prosecuted unless positively identified.

Darlene Cashman, Hall Transit, supports SB 129 and told the Committee that it is simply impossible for a bus driver to identify a driver in a car that is violating a school bus regulation.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Towe asked Senator Doherty whether the offense was against the owner of the car or the driver. Senator Doherty said it was against the driver.

Senator Towe asked Senator Doherty why SB 129 would not require the identity of a driver be established in order to prosecute. Senator Doherty said that by only having to identify the vehicle, it would make it easier to try cases involving violations of school bus regulations.

Closing by Sponsor:
Senator Doherty stated that for the compelling reasons of the safety of school children, SB 129 is a good piece of legislation to pass.

HEARING ON SB 153

Opening Statement by Sponsor:
Senator Doherty, District 20, stated that SB 153 addresses drivers without required liability insurance. SB 153 stiffens

the penalties against those who drive without insurance. It also adds points to driving records for convictions and eliminates the signature required at the time of registration. If convicted a second time, a judge would order the license plates and motor vehicle registration be taken away. Law enforcement feels SB 153 will be effective in keeping uninsured individuals off the streets.

Proponents' Testimony:
Representative Jim Rice, District 43, stated that SB 153 would have significant impact on uninsured individuals. Representative Rice stands in support of the bill.

Peter Funk, Assistant Attorney General, said that SB 153 would have impact on this problem without costing alot of money and time. The three areas that change in SB 153 would be to enhance penalties for driving with no insurance, add points to a driving record, and remove the requirement that a driver certify they have insurance at the time they register the vehicle at the county treasurers
office.

Dean Roberts, Motor Vehicle Division, stated that the offense is visible because the plates are taken away from the uninsured car. There are a very high number of vehicles in Montana that only carry liability insurance, therefore creating another problem. Mr. Roberts pledged his support of SB 153.

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, told the Committee that the citizens of Montana are frustrated by uninsured motorists. Mr. McGlenn stands in support of SB 153. SB 153 is a responsible approach to deal with the issue of uninsured individuals.

Gene Phillips, National Association of Independent Insurers, supports SB 153.

Jacqueline T. Lenmark, American Insurance Association, said that SB 153 is a responsible and cost effective solution to a very persistent problem. It recognizes the realistic enforcement capabilities of the state and local government. The penalties and the points should provide incentive to those who are susceptible. The removal of certification requirements recognizes the paper burden that is imposed on local government. Ms. Leamark urges the Committee to give SB 153 a DO PASS recommendation.

Glenna Wortman-Obie, AAA of Montana, stated that the penalties in the present law are weak and ineffective. SB 153 protects the forgetful, the innocent, and the motoring public. The biggest losses for insurance agencies are uninsured motorists claims. SB 153 may result in lower premiums. Ms. Wortman-Obie stands in support of SB 153 and asks for a do pass recommendation.

Cort Harrington, Montana County Treasurers Associations, urges support for SB 153.

Bill Fleiner, Sheriffs Association and Police Officers Association, supports SB 153. Mr. Fleiner said that SB 153 is practical and would allow law enforcement to tow vehicles that do not have license plates.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Halligan asked Mr. Fleiner about borrowing cars. Mr. Fleiner said that if the individual borrowing a car, makes an effort to find out whether the car has insurance, the individual would not receive a citation if he was stopped and had no insurance.

Senator Halligan asked about the uninsured motorist. Mr. Funk said that there are a variety of types of insurance coverage, some of which applies to borrowed vehicles. Mr. Funk said it is important to provide an incentive for people to discuss these issues and to make sure everyone understands about who is insured and what type of coverage is provided.

Senator Halligan asked Mr. Funk if someone could be convicted of driving without insurance if they were driving an uninsured vehicle, but had insurance that covered them while driving another car. Mr. Funk said that an under SB 153 an individual would not be convicted if their insurance covered their driving in another persons' car.

Senator Bartlett asked Mr. Funk whether an uninsured motorist would be charged with an offense if they borrowed a car that was insured and got into an accident. Mr. Funk said that they would not be charged.

Senator Towe asked Mr. Funk about page 10. Mr. Funk said that SB 153 sanctions the vehicle driven at the time of the offense. If the vehicle was not owned by the driver, the sanction would apply to the non-owned vehicle.

Senator Towe asked Mr. Funk about the driver of an uninsured vehicle. Mr. Funk said that the driver of an uninsured vehicle would not be held responsible, but the owner of the car would be.

Senator Towe asked Mr. Funk about borrowing a car that has already had prior convictions of driving without insurance. Mr. Funk said the person who was pulled over could not register a car for 180 days, but could drive their own car if it was insured.

Senator Towe asked Mr. Funk about insurance lapses. Mr. Funk said that if someone who has never had an offense and their insurance lapses and they lend the car to someone who has had to prior offenses, the car would lose its registration and license for 180 days.

Senator Towe asked Mr. Funk if there were any provisions for expunging the record. Mr. Funk said there was not.

Senator Towe asked Mr. Funk if the offenses would apply retroactively. Mr. Funk said that the agency would advise the Motor Vehicle Division not to apply the statute retroactively.

Chair Yellowtail asked Mr. Funk if the Country Treasurer would be responsible for checking the record system for every applicant for a motor vehicle registration. Mr. Funk said that it would. The country treasurers registration list would have a multiple offender no insurance list.

Chair Yellowtail asked Mr. Funk if the Country Treasurers would have to access the entire record system state wide. Mr. Funk said that they would have to key in the full name, address, and drivers license numbers for the offender. The country treasurers office would have to program the computer systems so once the information is keyed it would check for uninsured offenders.

Senator Yellowtail asked Mr. Harrington if all Country Treasurers are equipped to access the system. Mr. Harrington said that they are.

Senator Bartlett asked Mr. Funk about taking drivers licenses away. Mr. Funk said that taking drivers licenses does not deter offenders from driving. Taking away drivers licenses from offenders is not visible to law enforcers, but taking away license plates is.

Senator Crippen asked Mr. McGlenn if SB 153 should have some kind of mandatory uninsured motorist coverage. Mr. McGlenn said that it is an unrelated issue in SB 153.

Senator Crippen asked if there was legislation coming up dealing with coverage for uninsured motorists. Mr. McGlenn said no. Mr. McGlenn would support offering coverage for uninsured motorists, but is opposed to mandating that the public buy it.

Mr. Crippen asked Mr. McGlenn whether independent insurance agencies stress coverage for uninsured motorists. Mr. McGlenn said agents are responsible for informing the public of the availability of insurance that covers uninsured motorists. Uninsured motorist coverage covers bodily injury with a few exceptions. There would be a considerable cost to the consumer to cover more than bodily injury.

Chair Yellowtail asked Mr. Funk whether a person who owned two cars, would be able to drive one if he was cited for no insurance in the other. SB 153 would not affect multiple owned vehicles, unless one of the vehicles needed to be registered within those 180 days.

Senator Towe asked Mr. Funk about who would be enforcing SB 153. Mr. Funk said a judge would enforce SB 153. If an offender fails to turn in their license plates a judge can cite them for contempt of court.

Senator Towe asked Mr. Funk what would happen if judges do not follow up and make sure an offender has surrendered his license plates. Mr. Funk said there would have to be solutions if SB 153 passes.

Closing by Sponsor:
Senator Doherty said if judges do not enforce SB 153, they may face not getting elected. SB 153 addresses the problems of innocent people who have suffered at the hands of people who are breaking the law. The people who are breaking the law ought to be held responsible and the people who haven't broken the law ought not to have a problem. The absense of license plates on a vehicle would give law enforcement an edge at catching offenders. Senator Doherty stated that SB 153 is a good bill.

HEARING ON SB 55

Opening Statement by Sponsor:
Senator Towe, District 46, said the concept of SB 55 allows for the seizure of a vehicle that is uninsured. The person who is driving the car without insurance is not the offender, it is the person who owns the car. The first offense is a penalty not less than $250.00 and not to exceed $500.00 or 10 days in jail. After the second offense, the offender is subject to seizure of the vehicle. Upon a third offense the sentencing judge shall order a forfeiture of the vehicle. The judge must find the convicted person as the registered owner and that the vehicle was allowed to be used. After five years has elapsed between convictions the offense is kept confidential and can not be used as a prior conviction. SB 55 protects the security interest of the vehicle. There is a provision that allows a police officer to pick up the vehicle at the scene when the individual is arrested for failing to have insurance. Within five days the court has to send a notice to all the registered owners. If a registered owner did not know the vehicle was being used, the car would be released. When selling a vehicle notice must be given and the car would be sold in a commercially reasonable manner. The proceeds would be delivered to the mortgage company or the local entity who is responsible for seizing the car.

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-19-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock			X
Senator Rye	X		

FC8

Attach to each day's minutes

DATE 1/18

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 75-Qaa SB 55-Towe
SB 129-Doherty SB 153-Doherty

Name	Representing	Bill No.	Check One: Support	Oppose
Peter Funk	MT Ctr Attorneys Assoc	78	✓	
" "	Dept of Justice	153	✓	
DONNA HALL	HALL TRANSIT MT SCHOOL BUS CONTRACTORS	129	✓	
Cheryl Thares	Gt. Fls Public Schools	129	✓	
Ted Tabaracci		129	✓	
Darlene Cashman	Ikeel Transit	129	✓	
Wendy Mothershead				
Tadaire Mothershead				
ROGER MCGLENN	INDEPENDENT INS. AGENTS ASSOC. OF MT	153	✓	
DON BAKER		55	✓	
Jacqueline J. Lenmark	Am. Ins. Assoc.	153	✓	
Jacqueline J. Lenmark	Am. Ins. Assoc.	55		✓
Elena Wortman-Obie	AAA Montana	153	✓	
Carl Hassinger	MT. County Treasurers	153	✓	
Don Waldron	MREA	129	✓	
JOE ROBERTS	Mt. Cty. Atty. Assoc.	78	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 1/19

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 153

Name	Representing	Bill No.	Check One Support	Oppose
GENE PHILLIPS	NAII	SB153	X	
Dan Robb	Dept of Insurance	" "	Y	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

Motion: Senator Halligan MOVED a SUBSTITUTE MOTION that SENATE BILL 55 BE TABLED.

Discussion: Senator Crippen asked if it is the intention of the Committee to table SB 153 and come back to it at a later date. Senator Halligan answered yes.

Senator Towe said he liked the decision to table SB 55 because if SB 153 had some problems, SB 55 would still be available.

Vote: The substitute motion to TABLE PASSED UNANIMOUSLY.

EXECUTIVE ACTION ON SENATE BILL 153

Discussion: Senator Brown said he believed the committee would want to put the $1,000-$1200 concept in this bill.

Motion: Senator Doherty MOVED TO AMEND SENATE BILL 153. The motion would amend page 10, line 14, subsection 2 for the fines to first offense $1,000, on line 14, second offense $1200 on line 16 and third offense $1500 on line 19.

Discussion: Senator Doherty said he did this with some trepidation because, while we want the fines higher than the insurance, he was concerned about imposing fines because if people cannot afford the insurance he did not know how they would be able to afford the fines. He said this was some of the "lumps" you would have to take if you drive without insurance.

Senator Bartlett asked if anyone on the committee knew what the fines for DUI might be and Senator Halligan said up to $500 the first time. Standard fines are about $250 or $300. The standard for the second offense is about $350 and it goes up from there. His concern with the $1,000 or $1200, while he knew Rae Childs was trying to get the fine higher than the insurance, we also have to consider the rest of the criminal code.

Ms. Lane said the penalty for DUI, in PER SE, is not less than $500 or more than $1,000 for the third offense, the second is $300 to $500 and the first is $100 to $500.

Senator Towe said the point is that the fine will be at least as costly as getting insurance. The theory is that you may not get picked up more than one time during the year, and it is worth the risk since it is only a $250 fine. It is cheaper to take the risk, pay the fine, and not worry about it.

Senator Doherty mentioned that Senator Halligan said there should be some consistency. He did not believe there was any testimony on the cost of insurance.

Senator Bartlett said she did not understand the concern about making the fine equivalent to the cost of insurance. Driving

without insurance did not seem to be as grievous offense as driving under the influence. This probably goes along with Senator Halligan's concern about some consistency in fine provisions.

Senator Grosfield said he would agree with Senator Bartlett. This bill will take discretion of the Judge away by saying it will be $250 the first time around. He felt this was steep for the first time and thought the third offense should probably be stiff. In some ways we will be dealing with the person who forgot to pay his insurance and the way he gets reminded is when he gets his ticket. Senator Grosfield felt the amount was too much.

Motion: Senator Doherty made a SUBSTITUTE MOTION. The first offense would be $250, the second offense $500 and the third $1,000.

Discussion: Senator Halligan said he would like to bring in others, the insurance people, etc. to come in with testimony and put evidence on the record. If they wanted to do this we would have the information, if they wanted to leave the testimony the way it is, they could.

Senator Doherty WITHDREW SUBSTITUTE MOTION TO AMEND SENATE BILL 153.

Senator Towe said he did not like the idea of leaving everything to the House. He did not feel there was that much of a problem in determining insurance since we all get it. Senator Towe said if anyone has had to get insurance with a young person in the family, $1,000 is pretty standard. $250 is what we have now and it does not do much good. He believed the fine should be moved up to $500, $750 and $1,000 at least.

Senator Halligan said the practical matter is that the Court will look at the financial status of the defendant and say that person cannot afford it and will get the $500 fine with a portion suspended.

Motion: Senator Towe moved to amend the fines on line 14, $500, on line 16, $750 and line 19 $1,000.

Discussion: Senator Blaylock asked about Senator Towe's statement that the $250 fine does not do much good. He asked if there was any evidence presented to the committee that these people who are not reacting to the $250 because they do not have the money, or willfully disobeying the law.

Senator Towe said he did not know that there was any testimony about that either way. In some instances it is true they do not have the money and can not get the insurance. The idea is that they should not be driving if that were the case. Maybe we ought to drive home the point that the priorities are, if you drive you

have to have gasoline and you have to have insurance. If we put in $500, at least the Judge has discretion up to that $500, and he believed that is the minimum that should be in this bill.

Senator Crippen said he would agree with Senator Towe. From the other standpoint, if your car is hit and you do not have collision insurance, someone ran into you and the damage was $1,000 or more and $250 fine would not be much. He said there should be something to deter people from driving with no insurance. He said if insurance which was non-cancelable, were paid for a year in advance before you could buy your license, it would solve the problem. Senator Crippen said that is not being done so as a result, the laws should be made tough.

Vote: The MOTION TO AMEND by Senator Towe PASSED with Senators Grosfield, Rye and Yellowtail voting NO.

Discussion: Senator Doherty asked if this meant a $500 fine and not less. This was correct, but the Judge could suspend it.

Motion: Senator Doherty MOVED SB 153 DO PASS AS AMENDED.

Discussion: Senator Grosfield said he had some amendments and Senator Doherty WITHDREW HIS MOTION.

Motion: Senator Grosfield MOVED TO AMEND SENATE BILL 153 to add language on the offender. (The suggested amendment was not given to the Secretary)

Discussion: Senator Grosfield said his concern is with the concept of the offender and whether or not he is the owner of the car that the plates are being confiscated, on and the confusion that will arise where you almost have to deny someone had permission to use the car etc. The proposed amendments would also eliminate the county jail. He did not believe any Judge would sentence anybody for ten days and did not know why it is in the bill. These amendments would eliminate the jail sentence for the first and second conviction, but leaves it for the third which gives a jail sentence for from 10 to 30 days since the standard is generally for 30 days. The other two amendments 4. and 5. get at the problem of when the defense says you take license plates for the vehicle operated at the time of the offense, or unless the vehicle was not registered to the defendant. You get into the question of someone wanting to borrow the car and if they do not know it is not insured, etc. and the whole thing seems awkward. In this bill we are coming down on the people who do not have insurance, and we should. He believed a strong message was being sent out and the language is rather troublesome and awkward

Senator Towe said he agreed with Senator Grosfield.

Senator Grosfield said he could understand the confusion. If there is an offender and he owns the car, on the third time if he

is the driver, it would suspend his ability to get a license on this vehicle or on any other vehicle. If you are dealing with a small businessman, he might have several vehicles he will not be able to license.

Senator Towe said he was not sure that was exactly correct. Is your intention that if he has offended with the same vehicle, there is no question, but what if he is suspended with a different vehicle that he also owns. He asked what the intent would be here.

Senator Grosfield said he had not thought of that possibility. He believed it should be treated the same way. Senator Towe said then if the driver of an owned vehicle was suspended three times that would be okay. If he understood the bill correctly, you don't go out and take his registration on the other vehicles, but he can not get a new registration, so he is stuck until his registration expires since he cannot get it renewed before that time.

Senator Grosfield said that did concern him and goes back to the wife who is a co-owner. He did not address that in the amendment, but it was a concern.

Senator Doherty suggested the committee DEFER ACTION ON SB 153 and get Peter Funk to come over and work on this to get some amendments to bring back to the committee. He did not believe the committee or the AG office would be able to get at some of the major problems with some of the proposed amendments. He said he would like to make them come up with the work needed to get this bill out.

Senator Doherty said he would call the AG office and get Peter Funk over here to work on the amendments.

Chair Yellowtail asked Senator Grosfield, Towe and Doherty to work as a subcommittee to straighten out the policy questions involved with this and bring it back to the committee.

Senator Towe said he would like to ask two things as guidance for that subcommittee. One, is there any support for the concept he had raised in SB 55 of making the owner the offender. If there is support for that concept we should deal with it, if not we should know. Chair Yellowtail asked if there was a general feeling on the issue and said he for one would support that concept. Senator Rye said he would also support it.

Senator Blaylock said there were times when someone takes the vehicle without permission and Senator Towe said that is provided for in both cases, if it is done without permission it is not an offense.

Senator Yellowtail said the subcommittee should look into that concept. Senator Towe said the second thing he would like to ask

the committee, is there support for amending the concept of seizure of the vehicle. Senator Franklin said she did not believe that addressed Senator Halligan's issue. Senator Franklin said there is really no structure or protocol in place to deal with seizure and may be more than the Department can respond to at this time.

Senator Towe said he would like to ask the Department and if they have some further things, we should know about. If there is no interest in adding this in, he would not want to take up the Committee and Department's time on it.

Senator Doherty said he would resist any effort to work on seizure because the committee went through that very thoroughly and worked out the best way to do it was to grab the plates.

Senator Yellowtail said in view of the outcome of the last bill that concept was dead on the table. He suggested that not be included in Senate Bill 153. He said with the subcommittee having that direction to begin with, Senator Doherty WITHDRAWS HIS MOTION TO AMEND for the present time and we will continue discussion on this bill.

EXECUTIVE ACTION ON SENATE BILL 37

Discussion: Senator Towe said there was a subcommittee to work on this composed of himself, Senator Franklin, Senator Halligan. They met with John Conner, Ms. Lane and Amy Pfifer and went over all of the suggestions. He said they had come up with good amendments and believed they had made a much better bill in the process.

Motion: Senator Towe MOVED TO AMEND SB 37. (Exhibit #5)

Discussion: Senator Towe explained the amendments. They proposed to eliminate all of the exclusions and exemptions. The problem with doing any exemptions and exclusions, even with constitutionally protected activity like legitimate law enforcement investigations, is that as soon as you include some, by negative implication, you exclude others, and that is not a good idea. He said the committee had also included a statement of intent and read part of it to the committee. The next major item was that they took out the first warning in lines 11, 12 and 13 and the subcommittee put in the words "knowingly" and "repeatedly" on page 1, line 18. He said all the other four elements are there, but the theory in taking out the warning was reinserted in a new subsection on page 2, lines 16 through 19. He said in some cases it may not be appropriate to give a warning, and you do not have to prove a warning in those cases.

Senator Towe said the next amendment was to take where they took out the words "alarming or annoying". He said they brought in the language from the DUI law in order to prove a prior conviction, so if someone had a prior conviction of stalking in

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-25-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

(4)

Amendments to Senate Bill No. 153
First Reading Copy (white)

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
January 19, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 1-25-93
BILL NO. SB153

1. Page 10, lines 14 through 16.
Following: "~~$500~~" on line 14
Strike: remainder of line 14 through "both" on line 16

2. Page 10, lines 17 and 18.
Following: "$350" on line 16
Strike: line 17 through "both" on line 18

3. Page 10, line 20.
Strike: "10"
Insert: "30"

4. Page 10, line 25 through page 11, line 2.
Following: "offender" on page 10, line 25
Strike: remainder of line 25 through "registered" on page 11, line 2

5. Page 11, line 13.
Following: "offender"
Insert: ", if the offender is the owner of the vehicle involved in the second or subsequent violation or if the offender was in the vehicle involved in the second or subsequent violation at the time of the offense,"

Vote:
Motion tied. Senators Bartlett, Halligan, Doherty, Franklin, Yellowtail, Blaylock voting NO. Senators Harp, Brown, Grosfield, Towe, Rye, Crippen voting YES.

EXECUTIVE ACTION ON SB 229

Discussion:
Valencia Lane told the Committee Senator Towe and Senator Yellowtail requested the amendments. Valencia Lane explained the amendments (Exhibit #1)

Motion/Vote:
Senator Towe moved to AMEND SB 229. Motion to amend SB 229 CARRIED UNANIMOUSLY.

Motion:
Senator Towe moved SB 229 DO PASS AS AMENDED.

Discussion:
Senator Grosfield asked Valencia Lane about the amendment proposed by Senator Stang. Valencia Lane said Senator Stang's amendment was incorporated into the new amendments.

Vote:
Motion carried to AMEND SB 229. Senator Crippen voting NO.

EXECUTIVE ACTION ON SB 238

Discussion:
Senator Crippen explained the amendment. (Exhibit #2)

Motion/Vote:
Senator Crippen moved to amend SB 238. CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Crippen moved SB 238 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 153

Discussion:
Senator Doherty said Senator Towe and Senator Grosfield met with Peter Funk from the Attorney General's office about the question concerning who is driving the car, and whose plates would get lifted.

Discussion:
Senator Doherty said the first set of amendments was already adopted. (Exhibit #3)

Motion:
Senator Towe moved to AMEND SB 153. (Exhibit #4)

Discussion:
Peter Funk explained amendments sb015304.avl.

Senator Halligan asked Peter Funk about joint ownership. Mr. Funk said with the language in amendment sb015304.avl, if a joint owner was driving without insurance, it would result in a license plate cancellation.

Senator Halligan asked Peter Funk if it would affect the driver registration of other joint owned cars. Mr. Funk said it would not affect other registrations, it would affect only the vehicle driven at the time of the offense.

Senator Towe asked Mr. Funk when the plates would be picked up. Mr. Funk said after the second offense.

Senator Towe asked Mr. Funk if a person would be able to register a car if their spouse had committed the offense of driving without insurance. Mr. Funk said the spouse would be able to register a car, only if it was registered in their name.

Senator Towe asked Mr. Funk if there was a problem with immediate family. Mr. Funk said the definition could be inserted if necessary, however the courts would probably interpret immediate family as spouses and children.

Senator Halligan asked Mr. Funk about forfeiture. Mr. Funk said certain statutes include an innocent owner exception. Mr. Funk told the Committee an innocent owner exception is when someone is not aware of a criminal act that is happening with the property. Mr. Funk said if an innocent owner exception is created within an immediate family, people would begin to borrow cars. SB 153 is trying to curb the use of people driving without insurance.

Senator Bartlett told the Committee she likes the provision concerning the forfeiture, because it comes on the second

offense. Senator Bartlett said there would have been a first offense, so members of an immediate family would be aware there was no insurance on the vehicle.

Senator Crippen said noncancellable insurance should be required before licenses are received.

Senator Towe said noncancellable insurance was considered, and insurance rates would rise five or six times the amount they are currently charging. If insurance companies can not cancel insurance, they charge higher rates.

Vote:
Motion carried to amend SB 153 CARRIED UNANIMOUSLY.

Motion:
Senator Towe moved amend SB 153. (Exhibit #5)

Discussion:
Senator Towe explained the amendments sb015303.avl.

Senator Doherty said he resists amendment sb015303.avl. Senator Doherty discussed with the law enforcement community about seizing vehicles upon a court order. Law enforcement was not interested. Senator Doherty also stated that vehicles are significant assets for people in low income brackets. Senator Doherty said he understands the problem which is being addressed, but seizing the vehicles not the answer.

Senator Towe said this amendment is a policy measure. Senator Towe said he had some concerns about the seizure of the automobiles, but that it would draw attention to the problem of driving without insurance. Taking away license plates may not solve the problem, because vehicles would still be driven, by borrowing or stealing license plates. Senator Towe said seizure of a vehicle would happen after the third offense. Senator Towe said the Committee should be tough and do something about this problem.

Vote:
Motion to amend SB 153 failed. Senator Rye, Senator Towe voting YES.

Motion:
Senator Grosfield moved amendments one, two, and three. (Exhibit #6)

Discussion:
Senator Grosfield explained the amendments sb015301.avl.

Senator Towe said he checked with a judge concerning jail time. Senator Towe said the judge sends people to jail on the first offense, and the courts are getting tough on people who are driving without insurance. Senator Towe does not think raising the jail sentence would be a good idea. Senator Towe said the penalty for the third offense could be raised, but not for the first and second offense.

Senator Halligan told the Committee he would like to divide the question. Senator Halligan would like to vote on amendment one and two first, then number three which is increasing the third offense.

Senator Grosfield asked Senator Towe what circumstances the courts use jail sentences for the first offense. Senator Towe did not know the circumstances in which a judge would use a jail sentence, but said the judge he questioned uses jail sentences because it is the only thing that gets an offender's attention. Senator Towe said that maybe it is because the offenders have been to court before for not procuring their insurance at the time of the offense.

Motion:
Senator Grosfield withdrew amendment one and two.

Discussion:
Senator Doherty explained the amendment. Amendment number three increases jail time for the third offense from 10 days to 30 days.

Vote:
The motion to amend SB 153 CARRIED UNANIMOUSLY.

Motion/Vote:
Senator Halligan moved SB 153 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-4-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail			X
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin			X
Senator Blaylock			X
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

February 5, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 153 (first reading copy -- white), respectfully report that Senate Bill No. 153 be amended as follows and as so amended do pass.

Signed: William Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 10, line 14.
Strike: "$250"
Insert: "$500"

2. Page 10, line 16.
Strike: "$350"
Insert: "$750"

3. Page 10, line 19.
Strike: "$500"
Insert: "$1,000"

4. Page 10, line 20.
Strike: "10"
Insert: "30"

5. Page 10, line 23.
Strike: "registration certificate,"
Following: "receipt"
Strike: ","

6. Page 10, line 25 through page 11, line 2.
Following: line 24 on page 10
Strike: line 25, page 10 through "registered" on line 2, page 11
Insert: "if that vehicle was operated by the registered owner or a member of the registered owner's immediate family"

7. Page 11, line 3.
Page 11, line 5.
Page 11, line 8.
Strike: "certificate,"
Following: "receipt"
Strike: ","

8. Page 11, lines 12 through 15.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

-END-

Amd. Coord.
___ Sec. of Senate

Amendments to Senate Bill No. 153
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
January 28, 1993

Already adopted

1. Page 10, line 14.
Strike: "$250"
Insert: "$500"

2. Page 10, line 16.
Strike: "$350"
Insert: "$750"

3. Page 10, line 19.
Strike: "$500"
Insert: "$1,000"

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 2-4-93
SB 153

Amendments to Senate Bill No. 153
First Reading Copy

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane (and Peter Funk/Dept. of Justice)
January 29, 1993

1. Page 10, line 23.
Strike: "registration certificate,"
Following: "receipt"
Strike: "⊥"

2. Page 10, line 25 through page 11, line 2.
Following: line 24 on page 10
Strike: line 25, page 10 through "registered" on line 2, page 11
Insert: "if that vehicle was operated by the registered owner or a member of the registered owner's immediate family"

3. Page 11, line 3.
Page 11, line 5.
Page 11, line 8.
Strike: "certificate,"
Following: "receipt"
Strike: "⊥"

4. Page 11, lines 12 through 15.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 2-4-93
BILL NO. SB153

Amendments to Senate Bill No. 153
First Reading Copy (white)

Requested by Senator Grosfield
For the Committee on Judiciary

Prepared by Valencia Lane
January 19, 1993

SENATE JUDICIARY
EXHIBIT NO. 6
DATE 2-4-93
BILL NO. SB153

1. Page 10, lines 14 through 16.
Following: "~~$500~~" on line 14
Strike: remainder of line 14 through "both" on line 16

2. Page 10, lines 17 and 18.
Following: "$350" on line 16
Strike: line 17 through "both" on line 18

3. Page 10, line 20.
Strike: "10"
Insert: "30"

4. Page 10, line 25 through page 11, line 2.
Following: "offender" on page 10, line 25
Strike: remainder of line 25 through "registered" on page 11, line 2

5. Page 11, line 13.
Following: "offender"
Insert: ", if the offender is the owner of the vehicle involved in the second or subsequent violation or if the offender was in the vehicle involved in the second or subsequent violation at the time of the offense,"

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 12, 1993, at 8:00 a.m.

ROLL CALL

Members Present:
Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D
Rep. Bob Clark (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Vivian Brooke (D)
Rep. Duane Grimes (R)
Rep. Angela Russell (D)

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 153, SB 9, SB 251
Executive Action: None.

HEARING ON SB 153

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, said that SB 153 is the result of the coordination of the Department of Justice (DOJ), the insurance industry, and the American Automobile Association (AAA). This bill is an attempt to increase the penalties to make sure people will get insurance for

their automobiles.

Proponents' Testimony:

Peter Funk, Department of Justice, said he is on the Legal Advisor Task Force and focused on three areas of the bill: Section 5 page 10 which raises the fine amounts; Section 5, line 21, subsection (3) forfeiting the vehicle registration and license plate; and Section 6, page 11, drivers license points.

As the bill was originally proposed, the DOJ wanted to cover more than a registered owner operating a vehicle. The DOJ's proposal states that the registration of an individual convicted of this offense would be cancelled. The DOJ felt quite strongly that owners should be responsible for determining who had insurance before they loaned their cars out. The DOJ didn't see any way to emphasize that other than to put the registration sanction on the registrar to determine whether that vehicle is driven without insurance.

One important aspect of the bill is in sections 2, 3, and 4, particularly, page 8. When a person registers his vehicle, he has to sign on the registration receipt attesting that he has liability insurance. This system has basically never worked in Montana. There's no way a prosecutor can research every single automobile insurance company. It's an unprovable criminal offense. Beyond that problem, there's also the problem of coordinating county treasurers to actually obtain signatures. The DOJ has seen cases where some county treasurers require some people to sign their registration receipt, and others don't. **Mr. Funk** reemphasized that the system that exists now simply doesn't work.

Joe Roberts, Department of Justice, stated that over, past year and a half, phones calls from law enforcement constituents to the DOJ have been asking what the department is planning to do about liability insurance. There is clearly at least a perception that nobody does anything to people who don't have insurance. Montana has a very high number of passenger vehicles compared to other states that only carry liability insurance. **Mr. Roberts** pointed out that probably 50 percent of the vehicles in Montana only carry liability insurance, and 25 percent carry no vehicle insurance at all.

Rea Childs, Montana Collision Repair Service, submitted written testimony. **EXHIBIT 1**

Ron Ashabraner, State Farm Insurance Company, said he served on the Attorney General's Task Force. SB 153 does have the effect of protecting all people, especially low income people, meet the financial costs of purchasing automobile insurance.

Roger McGlenn, Executive Director, Independent Insurance Agents

Association of Montana (IIAA), stated that he also served on the Attorney General's Task Force. He pointed out that insurance agents face the problem of clients who suffer property damage or bodily injury caused by uninsured motorists. This bill shows responsibility to the public towards the uninsured motor problem.

Dawn Nobey, American Automobile Association of Montana, also served on the Attorney General's Task Force. **AAA** has over 90,000 members in Montana; a recent survey showed that an overwhelming 90 percent of its members believe that penalties for not carrying liability insurance would cause an immediate effect on the problem. **Ms. Nobey** said that uninsured liability is often the biggest reserve for insurance companies because it is an unknown.

Gene Phillips, National Association Independent Insurers (NAII), noted NAII's support of SB 153.

Jacqueline Lenmark, American Insurance Association (AIA), stated that **AIA** supports SB 153.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BIRD asked **Mr. Funk** why the courts shouldn't have to follow up on people who don't sign the insurance registration. She also commented that low income people are not able to pay fines and that money should be used to purchase automobile insurance rather than paying fines anyway. **Mr. Funk** said would be up to individual courts. Initially, the court is not going to be able to retain jurisdiction beyond the maximum potential jail sentence involved with the violation. The **DOJ** is looking at courts only being able to retain jurisdiction for probably a time period of about ten days. Long-term follow-up would be difficult.

REP. BERGMAN asked **Mr. Funk** why people aren't required to show proof of insurance when showing the state drivers license. **Mr. Funk** explained there about 8 or 10 years ago Montana drivers had to show proof of insurance to a county treasurer in order to register a vehicle. That system generated such an outcry from the citizens of the state that the signature requirement was put into effect in its place.

REP. BIRD referred to fiscal note assumption #2 which essentially says that an "counseling sessions will increase for those offenders driving without insurance if this bill is passed" and asked **Mr. Funk** why counseling is needed for lack of insurance. The **Motor Vehicle Division (MVD)** does not distinguish amongst offenses for the requirement of counseling session. Right now, whenever someone hits the current threshold of 20 points, then that person is required to have this counseling. One of the purposes of counseling is to let the individual know how close he

is to a three-year revocation of his drivers license. Once someone accumulates 30 conviction points within a three-year period, he is then statutorily classified as a habitual traffic offender and loses his license for a period of three years. At least one-tenth of the counseling session would allow the opportunity to talk to people about these specific violations.

Closing by Sponsor: None

HEARING ON SB 9

Opening Statement by Sponsor:

SEN. THOMAS TOWE, Senate District 46, Billings, said the purpose of SB 9 is to specifically authorize the representation in justice courts, city courts and lower courts by non-attorneys. Many people cannot afford an attorney to represent them. At the present time, people do not have to hire an attorney to represent them in small claims court. Why not allow some people to develop expertise in this area and allow them, with some regulation, to represent people in justice court, city court, and any other court that requires a jurisdiction? This works very well on Indian reservations right now where tribal courts use paralegals as their representatives.

Proponents' Testimony:

Craig L. Hoppe, Montana Magistrates Association, pointed out there are two main changes to the bill: 1) Providing that service of process in small claims courts is the same as in justice court and 2) The amount of the claim, exclusive of costs, does not exceed (changed from $2,500) to $3,000.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 251

Opening Statement by Sponsor:

SEN. THOMAS TOWE, Senate District 46, Billings, said that SB 251 adds city court judges as well as justice court judges in a number of places where they ought to be placed in code. It is an act clarifying the law relating to the city court jurisdiction;

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 3-12-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke			✓
Rep. Bob Clark	✓		
Rep. Duane Grimes			✓
Rep. Scott McCulloch	✓		
Rep. Jim Rice			
Rep. Angela Russell			✓
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

EXHIBIT 1
DATE 3-12-93
SB 193

Increasing Fines and Penalties
on Uninsured Motorists
March 5, 1993

Insurance Rate Comparison

Couple with '78 pickup and '89 cutlass supreme; liability on the truck, full basic coverage on the auto. A few months later they add their teenager as an occasional driver. Lastly, the teen becomes the driver of his own vehicle. The rates shown are for 25/50/25 with $500 deductible on comp and collision.

Allstate	**Pickup**	**Auto**	**Pickup #2**	**Semi-Annual Total**
Basic Coverage	168.00	293.00		466.00
Teen On Pickup	196.00	329.00		525.00
Teen Own Vehicle	168.00	329.00	472.00	969.00
Farmers Union				
Basic Coverage	129.86	315.78		445.64
Teen On Pickup	270.85	315.78		586.63
Teen Own Vehicle	129.85	315.78	401.95	846.73
State Farm				
Basic Coverage	168.90	370.70		539.60
Teen On Pickup	268.85	370.70		652.55
Teen Own Vehicle	168.90	370.70	364.68	902.28
Farmers				
Basic Coverage	123.00	302.60		425.60
Teen on Pickup	241.00	302.60		543.60
Teen Own Vehicle	123.00	302.60	270.90	696.50

Further Information regarding agents, regional breakouts within Montana and other insurance companies can be supplied upon request.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB. 153

DATE March 12, 1993 SPONSOR(S) S. Doherty

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ron Wilde	MT Collision Repair Soc.	✓	
Glenna Wortman-Obie	AAA Montana	✓	
Dean Roberts	Dept of Justice MVD	✓	
Roger McGLENN	IIAM	✓	
Greg Van Horssen	State Farm Ins	✓	
Paul Ashabranner	State Farm Ins	✓	
GENE PHILLIPS	NAII	✓X	
Jacqueline Lenmark	AIA	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON SB 153

Motion: **REP. RICE** moved an amendment to strip off the Senate amendment and put the fines back to the level with which the bill was introduced.

Discussion:

CHAIRMAN FAGG opposed the amendment. He suggested two options. One option would be to raise the fine up to $500 or $1,000 to give the judge that discretion. But in really grievous cases, judges will put on a larger fine. Or in option 2, **CHAIRMAN FAGG** would like the judge to suspend part of the $500 or $1,000 fine. He would like to see judicial discretion. It is **CHAIRMAN FAGG'S** opinion that a $250 fine will not prevent many people from getting insurance, because it's going to cost them two or three times that to get insurance.

REP. BROOKE asked **REP. RICE** if the second part of the amendment the Senate added was so that part of that sentence could not be suspended. **REP. RICE** explained that, currently, the fine for offense of this nature, no matter what offense it is, the first offense fine is not less than $250 and not more than $500 with no restrictions on whether the court can suspend the fine. What is happening here is that courts are suspending a lot of these fines. The bill, as introduced, is on a graduated scale; first offense is $250, second offense is $350, and third offense is $500. The provision on page 11, lines 18-20 says that the court may suspend the fines only upon determination that the defender is or will be unable to pay the fine. It has made it much more difficult, but not impossible, for a court to suspend those fines. On page 10, the Senate raised the fine from $250 to $500 to $750 to $1,000, and **REP. RICE** thinks these fines have gone too far. **REP. RICE** also disclosed that regarding the jail time, the Senate raised the sentence from 10 to 30 days, and **REP. RICE** included in his amendment to put the bill back to the way it was introduced.

Vote: The question was called on **REP. RICE'S** amendment to revert back to the bill the way it was introduced. Motion carried 13-5 with **CHAIRMAN FAGG, REPS. BERGMAN, CLARK, SAYLES** and **VOGEL** voting no.

Motion: **REP. BIRD** moved an amendment to delete the Senate language on page 11, lines 2,3, and 4 and go back to the original language that begins on page 10, line 25 through and page 11, line 2.

Discussion:

CHAIRMAN FAGG suggested to insert after immediate family, "or authorized driver."

Motion: **REP. BIRD** moved a substitute amendment to insert on page 11, line 4, after immediate family: "or authorized driver."

Vote: The question was called on **REP. BIRD'S** amendment. Motion carried 16-2 with **REPS. WYATT** and **SAYLES** voting no.

Motion/Vote: **REP. WHALEN** moved an amendment. **EXHIBIT 1** Motion failed by a vote of 14-4 with **REPS. TOOLE, McCULLOCH, RUSSELL** and **WHALEN** voting yes.

Motion: **REP. BROWN** moved to strike section 4 from the bill. This would put the bill back to its original language: once a year people would sign a statement attesting that the car is insured.

Discussion:

REP. JODY BIRD reiterated that if section 4 is stricken from the bill, lines 22 through 25 on page 8, then lines 1 and 2 on page 9 will still be in effect because they are in HB 336 which includes the identical language. **Mr. MacMaster** explained that SB 153 and HB 336 are identical with respect to the amendments to section 4.

REP. BIRD said the county treasurers asked her to carry this bill. They would like people to sign, on their motor vehicle registration receipt, a message stating that the driving person knows it is illegal to be driving his car without motor vehicle insurance.

REP. RICE mentioned that the language on page 9, lines 3-7 was stricken because that was language currently in the law regarding a person's signature on his motor vehicle registration. It shouldn't have been struck from the 1991 bill, which passed regarding registration by mail, because the legislature deleted the part of signing off certifying insurance by mail. This session is making it consistent for the person who goes downtown to pick up his registration.

REP. BROWN withdrew his amendment.

Motion: **REP. BIRD MOVED SB 153 BE TABLED.**

Discussion:

REP. WHALEN said this bill isn't going to make insurance anymore affordable or available, and it's not going to solve the problem of uninsured motorists. It's going to make a lot of uncollected fines and put people in jail.

Motion/Vote: The question was called on the table motion. Motion to table failed 8-10 with **REPS. BROWN, BIRD, McCULLOCH, RUSSELL, SAYLES, WHALEN, WINSLOW** and **WYATT** voting yes.

The Chairman announced that, without objection from the committee, the vote would be reversed from **TO TABLE** vote of 8-10 to **DO PASS** vote of 10-8. **REP. RICE** will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 368

Motion: REP. BROWN MOVED SB 368 BE CONCURRED IN.

Motion: REP. TOOLE moved an amendment. **EXHIBIT 2** He said this bill would only address misdemeanors; the Confederated Salish and Kootenai Tribe (CSKT) have more than enough resources to handle misdemeanors in court.

REP. WINSLOW asked about the intention of the CSKT if this bill were to not pass this session. **Majel Bird, prosecuting attorney for the Tribe**, explained that tribal members feel they are one of the most progressive tribes in the nation, and it's ironic that they don't have the basic, simple jurisdiction of misdemeanors over Indian people that all other tribes appreciate. As an alternative, under the Indian Civil Rights Act of 1968, they have the consent of the state legislature first to retrocede. If the state doesn't give their consent, they will seek further assistance from Congress.

CHAIRMAN FAGG asked **Ms. Bird** what percentage of the reservation is in Lake County as opposed to the three other surrounding counties. **Ms. Bird** said probably 60 percent of the reservation is in Lake County.

REP. BILL TASH asked **Ms. Bird** with regards to the reservations in the United States, how many tribes have retroceded. **Ms. Bird** said that approximately 160 tribes have retroceded since 1968. These tribes have followed the same procedure enacted in their states as the CSKT has followed in Montana.

REP. ELLEN BERGMAN asked **Ms. Bird** why the CSKT want to isolate themselves from the rest of the state and the people they live with. **Ms. Bird** explained that every government has its right to set laws in its own territorial government. Indian nations are a government within themselves, a sovereign nation and they want that right.

CHAIRMAN FAGG said he will vote against the bill because he learned that 60 percent of the reservation is in Lake County. The Lake County Commissioners are opposed to this bill, the Lake County Sheriff is opposed to the bill and will be directly involved in law enforcement, and the Lake County attorney opposed the bill. **CHAIRMAN FAGG** doesn't think the legislature should get too intertwined in such an intensely, local and emotional issue without full cooperation from all segments of the affected local residents. What **CHAIRMAN FAGG** would like to see is true cooperation over the next two years between Lake County

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 3-25-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 153 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read: Carried by: Rep. J. Rice

1. Page 10, line 14.
Following: "~~$250~~"
Insert: "not less than $250 or more than"

2. Page 10, line 17.
Strike: "$750"
Insert: "$350"

3. Page 10, line 19.
Strike: "$1,000"
Insert: "$500"

4. Page 10, line 20.
Strike: "30"
Insert: "10"

5. Page 11, line 4.
Following: "FAMILY"
Insert: "or by a person whose operation of that vehicle was authorized by the registered owner"

-END-

Committee Vote:
Yes 10, No 0.

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HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-25-93 BILL NO. SB 153 NUMBER 18

MOTION: Motion to pass carries 10-8

(Motion was reversed from a 10-8 table motion)

NAME	~~AYE~~ NO	~~NO~~ Aye
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke		✓
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch	✓	
Rep. Jim Rice		✓
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	8	10

EXHIBIT 1
DATE 3-25-93
SB 153

Amendments to Senate Bill No. 153
Third Reading Copy

Requested by Rep. Whalen
For the Committee on the Judiciary

Prepared by John MacMaster
March 16, 1993

1. Title, line 12.
Strike: "AND"
Insert: "ALLOWING A DIRECT SUIT AGAINST AN INSURER IF A CLAIM IS OR MAY BE COVERED BY MOTOR VEHICLE LIABILITY INSURANCE SOLD BY THE INSURER;"

2. Title, line 14.
Following: "MCA"
Insert: "; AND PROVIDING AN APPLICABILITY DATE"

3. Page 14, line 19.
Following: line 18
Insert: "NEW SECTION. **Section 8. Direct suit against a defendant's motor vehicle liability insurer -- evidence of insurance.** (1) In a civil proceeding in which a claim or claims against a defendant are or may be covered by motor vehicle liability insurance, the insurance company is a real party in interest and must be joined as an additional party defendant.

(2) Evidence of the amount and coverage of the liability insurance is admissible and must be addressed in the jury instructions.

NEW SECTION. **Section 9. Applicability.** [Section 8] applies to claims arising after [the effective date of this act]."